

DIRECTIONS FOR COMPLETING ALCOHOL/DRUG TESTING REFUSAL CERTIFICATION FORMS

I. IF THE PERSON IS DRIVING OR IN ACTUAL PHYSICAL CONTROL OF A NON-COMMERCIAL MOTOR VEHICLE, SNOWMOBILE OR OTHER VEHICLE:

A. PRELIMINARY ALCOHOL SCREENING TEST (PAST) (MCA § 61-8-409)

STANDARD FOR TESTING: The officer must have PARTICULARIZED SUSPICION that the motorist was driving or in actual physical control of a vehicle upon ways of the state open to the public while:

- (a) under the influence of alcohol; or
- (b) under the age of 21 with an alcohol concentration of .02 or more.

PROCEDURE:

1. Both the officer administering PAST and the preliminary breath testing device (PBT) must be certified by the Department of Justice, Forensic Science Division.
2. The motorist need not be under arrest. The test is typically conducted in conjunction with field sobriety tests as part of the investigation at the scene.
3. The motorist must be read a PAST advisory before the test is requested. A PAST advisory form (Form 36-0400A, PRELIMINARY ALCOHOL SCREENING TEST ADVISORY) contained on 4 x 6 inch card may be used. Form 36-0400A advises the motorist that a preliminary breath test is being requested and outlines what will happen if the motorist refuses to submit to the requested test. If Form 36-0400A is used, select the correct advisory to be used. If the motorist is suspected of DUI, use section "A" - the DUI advisory. If the motorist is suspected of a .02 BAC under 21, use section "B" - the .02 advisory. If the motorist is driving a commercial motor vehicle, use section "C" - CMV only and refer to the instructions for a person driving or in actual physical control of a commercial motor vehicle (Section II of this form).
4. If PAST is refused, the officer must certify testing refusal by completing Form 36-0400 ALCOHOL/DRUG TESTING REFUSAL CERTIFICATION, and submitting it to the address listed below. Follow the instructions listed under section B, numbers 4-8, below. If PAST is refused, but the motorist is later arrested and agrees to submit to breath or blood test under Montana's implied consent law, the officer should still certify the PAST refusal by completing and submitting Form 36-0400 to the Department.
5. A PAST refusal carries the same administrative driver license sanction as a refusal to submit to a breath or blood test under Montana's implied consent law.
6. If, during the same incident, a motorist refuses both a PAST request and a breath or blood test request under Montana's implied consent law, the administrative driver license sanction does not change. The refusals may not be treated separately for purposes of determining the length of the appropriate license suspension.

B. BREATH OR BLOOD TEST UNDER MONTANA'S IMPLIED CONSENT LAW (MCA § 61-8-402)

STANDARD FOR TESTING: One of the following conditions must be met before a breath or blood test is requested under Montana's implied consent law (MCA § 61-8-402):

- (a) the motorist must be UNDER ARREST for EITHER:
 - I. driving or being in actual physical control of a non-commercial motor vehicle, snowmobile or other vehicle while under the influence of alcohol, drugs or both (DUI); or
 - II. driving or being in actual physical control of a noncommercial motor vehicle, snowmobile or other vehicle while under the age of 21 with an alcohol concentration of .02 or more (.02 BAC); OR
- (b) the motorist must have been involved in A MOTOR VEHICLE ACCIDENT or collision resulting in property damage, bodily injury, or death AND the officer must have PROBABLE CAUSE to believe motorist was driving or in actual physical control of vehicle in violation of MCA § 61-8-401 (DUI); OR
- (c) the officer must have PROBABLE CAUSE to believe the motorist was driving or in actual physical control of a vehicle involved in a MOTOR VEHICLE ACCIDENT or collision resulting in serious bodily injury as defined in MCA § 45-2-101, or death.

PROCEDURE:

1. Both the officer administering breath analysis and the breath analysis instrument must be certified by the Department of Justice, Forensic Science Division.
2. The motorist must either be under arrest for DUI or .02 alcohol concentration OR the officer must have probable cause to believe that the motorist has been involved in a motor vehicle accident resulting in property damage was driving under the influence (DUI) OR the officer must have probable cause to believe the motorist was driving or in actual physical control of a vehicle involved in a motor vehicle accident resulting in serious bodily injury or death (no probable cause required re DUI).
3. The motorist must be read an implied consent advisory before a breath or blood test is requested. Form 36-0300 NON-COMMERCIAL IMPLIED CONSENT ADVISORY may be used. If Form 36-0300 is used, after the advisory has been given, the officer must complete the form, sign it, date it and keep it in his or her files for future reference.

4. If the breath or blood test request is refused, the officer must certify the testing refusal by completing Form 36-0400 ALCOHOL/DRUG TESTING REFUSAL CERTIFICATION. The officer must fill in officer identification data, location, time of incident, motorist identification and driver license information. The officer must indicate whether PAST, breath or blood test, or both, were refused. The officer must indicate whether or not a temporary 5-day driving permit was issued to the motorist. The officer must sign and date the form.
5. The officer must detach the second page of form 36-0400 (yellow copy) and give it to the motorist. This form provides the motorist with official notice of the license suspension and the right to hearing provided under MCA § 61-8-403. It also explains the requirements for license reinstatement following suspension.
6. If a 5-day temporary driving permit was issued to the motorist, both the officer and the motorist must sign the second page of the form. The temporary driving permit is not valid unless signed by both the issuing officer and the motorist. The temporary driving permit is not valid until 12 hours after issuance.
7. Immediately submit the white copy of the certification along with the seized license to the Motor Vehicle Division at the address listed below.
8. Upon receipt of the certification form, the Department of Justice, Motor Vehicle Division will enter the testing refusal on the computerized driving records maintained by the Department and take the appropriate suspension action against the motorist's driver license, driving privilege and/or eligibility to apply for and be issued a driver license. If the motorist has a driver license issued by another jurisdiction (state), the license and a copy of the certification will be sent to the licensing authority in that jurisdiction.

II. IF THE PERSON IS DRIVING OR IN ACTUAL PHYSICAL CONTROL OF A COMMERCIAL MOTOR VEHICLE (CMV)

A. PAST AND/OR BREATH OR BLOOD TEST OF OPERATOR OF COMMERCIAL MOTOR VEHICLE (MCA § 61-8-806)

STANDARD FOR TESTING: The officer has reasonable grounds to believe that the motorist was driving or in actual physical control of a commercial motor vehicle (CMV) upon the ways of this state open to the public while having a measurable alcohol concentration or detected presence of alcohol.

PROCEDURE:

1. Both the officer administering PAST or breath analysis and the PBT device or breath analysis instrument that is used must be certified by the Department of Justice, Forensic Science Division.
2. The motorist need not be under arrest.
3. Before a PBT is requested, the motorist must be read a PAST - CMV advisory. Section "C" Form 36-0400A PRELIMINARY ALCOHOL SCREENING TEST ADVISORY - CMV ONLY may be used. Use Form 36-0100 COMMERCIAL IMPLIED CONSENT or 0.04 ALCOHOL CONCENTRATION CERTIFICATION to document refusal or failure of the PAST.
4. If the motorist refuses to submit to the PAST or the PBT shows a test result of .04 or greater, you may request a breath or blood test to determine the motorist's alcohol concentration. Before a breath or blood test is requested, the motorist must be read an implied consent advisory specific to operation of a commercial motor vehicle. Form 36-0200 COMMERCIAL VEHICLE IMPLIED CONSENT ADVISORY may be used. If Form 36-0200 is used, after the advisory has been given, the officer must complete the form, sign it, date it and keep it in his or her files for future reference.
5. If the breath or blood test request is refused or the test results show an alcohol concentration of .04 or greater, the officer must certify the testing refusal or test results by completing Form 36-0100 COMMERCIAL IMPLIED CONSENT or 0.04 ALCOHOL CONCENTRATION CERTIFICATION. The officer must fill in officer identification data, location, time of incident, motorist's identification and driver license data. If the motorist refused testing, the officer must indicate whether PAST, breath or blood test, or both, were refused. If the motorist submitted to the requested test(s) and the test(s) showed an alcohol concentration of .04 or more, the test results must be indicated in the appropriate space. The officer must indicate whether the motorist was declared out-of-service for a 24-hour period. The officer must indicate whether the motorist was issued a temporary non-commercial 5-day driving permit. The officer must sign and date the form.
6. The officer must detach the second page of form 36-0100 (yellow) and give it to the motorist. This form provides the motorist with official notice of the license suspension and the right to hearing provided under MCA § 61-8-808. The form also explains the requirements for license reinstatement following suspension.
7. If a 5-day temporary non-commercial motor vehicle driving permit was issued to the motorist (only available if the motorist refused testing) both the officer and the motorist must sign the form. The temporary driving permit is not valid unless signed by both the issuing officer and the motorist. The temporary driving permit is not valid until 12 hours after issuance.
8. The officer must immediately submit the white copy of the certification along with the seized license to Motor Vehicle Division at the address listed below.
9. Upon receipt of the certification form, the Department of Justice, Motor Vehicle Division will enter the testing refusal or test result on the computerized driving records maintained by the Department and take the appropriate suspension action against the motorist's driver license, driving privilege and/or eligibility to apply for and be issued a driver license. If the motorist has a driver license issued by another jurisdiction (state), the license and a copy of the certification will be sent to the licensing authority in that jurisdiction.

**Additional forms may be obtained upon request by writing to the
Motor Vehicle Division, PO Box 201430, 303 N. Roberts, Helena, Montana 59620-1430,
or by calling 406-444-3289**